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UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, ) CR No. 07-364-RC  
Plaintiff, )  
v. ) RULE 11(c)(1)(C) SPECIFIED  
PYROTEK SPECIAL EFFECTS, ) SENTENCE PLEA AGREEMENT FOR  
INC., ) DEFENDANT PYROTEK SPECIAL  
Defendant. ) EFFECTS, INC.

1. This constitutes the plea agreement Pyrotek Special Effects, Inc. ("defendant") and the United States Attorney's Office for the Central District of California ("the USAO") in the above-captioned case. This agreement is limited to the USAO and cannot bind any other federal, state or local prosecuting, administrative or regulatory authorities.

2. The parties expressly agree that this Agreement is entered into and is to be controlled by Federal Rule of Criminal Procedure 11(c)(1)(C). The USAO and defendant understand and

1 agree that: (a) if the Court accepts this Agreement, the parties  
2 are bound by the terms of the Agreement; and (b) if the Court  
3 does not accept this Agreement; any party may withdraw from the  
4 Agreement and defendant may withdraw its plea of guilty. The  
5 parties request that the Court accept this Agreement at the time  
6 of the entry of the guilty plea.

7    PLEA TO INFORMATION

8    3. Defendant agrees to plead guilty to the single-count  
9 misdemeanor information in United States v. Pyrotek Special  
10 Effects, Inc., CR No. 07-364-RC.

11    CORPORATE AUTHORIZATION

12    4. Defendant represents that it is authorized to enter  
13 into this Agreement. On or before the date of entry of the Plea  
14 Agreement, defendant shall provide to the United States and the  
15 Court a written statement in the form of notarized legal  
16 documents certifying that defendant corporation is authorized to  
17 enter into and comply with all of the provisions of this Plea  
18 Agreement. The resolutions further shall certify that a  
19 corporate representative is authorized to take these actions, and  
20 that all corporate formalities for such authorizations have been  
21 observed (see Attachment B).

22    ORGANIZATIONAL CHANGES AND APPLICABILITY

23    5. This Agreement shall bind defendant, its successor  
24 corporation if any, and any other person or entity that assumes  
25 the liabilities contained herein ("successors-in-interest").  
26 Defendant, or its successors-in-interest, if applicable, shall  
27 provide the USAO and the United States Probation Office for the  
28 Central District of California with immediate notice of any name

1 change, business reorganization, sale or purchase of assets,  
2 divestiture of assets, or similar action impacting their ability  
3 to pay the fine or affecting this Agreement. No change in name,  
4 change in corporate or individual control, business  
5 reorganization, change in ownership, merger, change of legal  
6 status, sale or purchase of assets, or similar action shall alter  
7 defendant's responsibilities under this Agreement. Defendant  
8 shall not engage in any action to seek to avoid the obligations  
9 and conditions set forth in this Agreement.

10    NATURE OF THE OFFENSE

11         6. The parties stipulate and agree that under well-  
12 established principles of corporate liability and respondeat  
13 superior, as these principles apply in this case, defendant is  
14 liable for the actions of its agents and employees. New York  
15 Central and Hudson River R.R. v. United States, 212 U.S. 481, 495  
16 (1909) ; United States v. Beusch, 596 F.2d 871 (9<sup>th</sup> Cir. 1979);  
17 United States v. Hilton Hotels Corporation, 467 F.2d 1004-1007  
18 (9<sup>th</sup> Cir. 1972).

19         7. In order for defendant to be guilty of Improper Storage  
20 of Explosive Materials, in violation of Title 18, United States  
21 Code, Sections 842(j) and 844(b), the following must be true:  
22 defendant, by and through the actions of its agents and employees  
23 did (1) knowingly store explosive materials; (2) within a motor  
24 vehicle; (3) in an improper manner. Specifically, defendant did  
25 knowingly store technical pyrotechnic devices that were not  
26 marked with an EX (explosives) number for each substance,  
27 article, or device contained therein and did not have markings  
28 identifying the materials as "Articles, technical for pyrotechnic

1 purposes, UN0431" in violation of federal regulations. Defendant  
2 admits that defendant is, in fact, guilty of this offense as  
3 described in the information.

## PENALTIES

5       8. The statutory maximum sentence that the Court can impose  
6 against a corporate defendant for a violation of Title 18, United  
7 States Code, Sections 842(j) and 844(b), is a five-year period of  
8 probation; a fine of \$200,000 or twice the gross gain or gross  
9 loss resulting from the offense, whichever is greatest; and a  
10 mandatory special assessment of \$125.

## SUSPENSION/REVOCATION/DEBARMENT

12        9. Defendant understands that if defendant holds any  
13 regulatory licenses or permits, the convictions in this case may  
14 result in the suspension or revocation of those licenses and  
15 permits. By this Agreement, the USAO makes no representation or  
16 promise concerning suspension or debarment of defendant from  
17 contracting with the United States or with any office, agency, or  
18 department thereof. Suspension and debarment of organizations  
19 convicted under various federal environmental protection and  
20 criminal statutes is a discretionary administrative action solely  
21 within the authority of the federal contracting agencies.

## FACTUAL BASIS

23       10. Defendant and the USAO agree and stipulate to the  
24 statement of facts provided below. It is not meant to be a  
25 complete recitation of all facts relevant to the underlying  
26 criminal conduct or all facts known to either party that relate  
27 to that conduct.

On June 20, 2006, in Culver City, California, Pyrotek

1 Special Effects, Inc., by and through the actions of its  
2 authorized agents and employees, did knowingly store explosives  
3 materials, namely, technical pyrotechnic devices, within a motor  
4 vehicle in an improper manner. Specifically, the packages for  
5 said technical pyrotechnic devices were not marked with an EX-  
6 number ("explosives number") for each substance, article, or  
7 device contained therein and did not have markings identifying  
8 the materials as "Articles, technical for pyrotechnic purposes,  
9 UN0431," in violation of regulations promulgated pursuant to the  
10 HMTS, Title 49, United States Code, Section 5101 et seq. and 49  
11 Code of Federal Regulations, Sections 172.101, 172.301, and  
12 172.320.

13 WAIVER OF CONSTITUTIONAL RIGHTS

14 11. By pleading guilty, defendant gives up the following  
15 rights:

16 a) The right to persist in a plea of not guilty.  
17 b) The right to a speedy and public trial by jury.  
18 c) The right to the assistance of legal counsel at  
19 trial, including the right to have the Court appoint counsel for  
20 defendant for the purpose of representation at trial. (In this  
21 regard, defendant understands that, despite its plea of guilty,  
22 it retains the right to be represented by counsel -- and, if  
23 necessary, to have the court appoint counsel if defendant cannot  
24 afford counsel -- at every other stage of the proceeding.)

25 d) The right to be presumed innocent and to have the  
26 burden of proof placed on the government to prove defendant  
27 guilty beyond a reasonable doubt.

28 e) The right to confront and cross-examine witnesses

against defendant.

f) The right, if defendant wished, to testify on defendant's own behalf and present evidence in opposition to the charges, including the right to call witnesses and to subpoena those witnesses to testify.

g) The right not to be compelled to testify, and, if defendant chose not to testify or present evidence, to have that choice not be used against defendant.

## SENTENCING FACTORS

12. Defendant and the USAO agree and stipulate that, pursuant to United States Sentencing Guidelines ("U.S.S.G.") §§ 8C2.1 and 8C2.10, the sentencing guidelines are not applicable in determining the fine for an organization violating statutes relating to the environment.

## SENTENCING AGREEMENT

13. Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C), the USAO and defendant agree that an aggregate criminal fine (including community service) of \$150,000 (one hundred fifty thousand dollars) is appropriate in this case. Pursuant to U.S.S.G. §§ 8D1.1 and 8D1.2, defendant shall be sentenced to a term of organization probation for two years, based upon the following factors set forth in 18 U.S.C. § 3553(a): the nature and circumstances of the offense and the history and characteristics of the defendant; and the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, to provide just punishment for the offense, and to afford adequate deterrence to criminal conduct. Defendant and the USAO further agree and stipulate that

1 defendant shall be placed on probation for two years under the  
2 following terms and conditions:

3           a. Defendant shall pay a total criminal fine of  
4 \$150,000 with \$75,000 of that fine suspended for use in community  
5 service and restitution for the response costs of local fire and  
6 police agencies as set forth below in paragraphs 12(f) and 15.

7           b. Specifically, defendant shall pay a criminal fine  
8 of \$75,000 as to the single-count Information. The first \$25,000  
9 installment of the criminal fine shall be made by a cashier's  
10 check (or equivalent) payable to the Clerk of the United States  
11 District Court, within seven (7) days of the date of sentencing.  
12 The second \$25,000 installment of the criminal fine shall be made  
13 by a cashier's check (or equivalent) payable to the Clerk of the  
14 United States District Court, within one year of the date of  
15 sentencing. The third \$25,000 installment of the criminal fine  
16 shall be made by a cashier's check (or equivalent) payable to the  
17 Clerk of the United States District Court, within two years of  
18 the date of sentencing.

19           c. Defendant agrees to abide by and follow any lawful  
20 orders issued by any local, state, or federal regulatory agency  
21 having jurisdiction over the facility.

22           d. Defendant agrees that it will not transport any  
23 explosive or hazardous materials itself, but will instead  
24 contract such activities to properly licensed and authorized  
25 third parties.

26           e. Defendant agrees to pay to the Clerk of the United  
27 States District Court on the date of sentencing (or as soon as  
28 the Court is able to accept the payment) the mandatory special

1 assessment of \$125 pursuant to 18 U.S.C. § 3013(a)(1)(B)(iii).

2 f. Defendant agrees to pay restitution in the total  
3 amount of \$3,534.04 to City of Culver City for costs incurred in  
4 responding to, and investigating, this matter. Defendant further  
5 agrees that defendant will not seek the discharge of any  
6 restitution obligation, in whole or in part, in any present or  
7 future bankruptcy proceeding. Defendant further agrees to make  
8 restitution listed above within one week of the sentencing  
9 hearing in this matter.

10 14. Pursuant to FRCP 32(c)(1)(A)(ii), the parties request  
11 that the Court waive the preparation of a pre-sentence report in  
12 this matter. The parties further request that the Court sentence  
13 defendant at the time the guilty plea to the Information is  
14 entered.

15 15. In the event that the Court defers acceptance or  
16 rejection of this specified sentence plea until it has reviewed  
17 the presentence report in this case, pursuant to Federal Rule of  
18 Criminal Procedure 11(c)(3)(A), both defendant and the USAO are  
19 free to: (a) supplement the facts stipulated to in this Agreement  
20 by supplying relevant information to the United States Probation  
21 Office and the Court, and (b) correct any and all factual  
22 misstatements relating to the calculation of the sentence.

23 COMMUNITY SERVICE

24 16. The parties agree that \$75,000 of the total criminal  
25 fine amount of \$150,000 be suspended for the explicit purpose of  
26 defendant applying the suspended amount to performing community  
27 service pursuant to §8B1.3 of the Federal Sentencing Guidelines  
28 and in furtherance of the sentencing principles provided for

1 under 18 U.S.C. § 3553(a) and paying the restitution described in  
2 paragraph 12(f) above. The explicit goal of defendant's required  
3 community service is to fund environmental projects, enforcement  
4 efforts, and initiatives designed for the enforcement of  
5 environmental and public safety regulations, and the benefit,  
6 preservation, and restoration of the environment and ecosystems  
7 in the Central District of California. These projects and  
8 initiatives are to include, but are not limited to, the  
9 following: monitoring, study, restoration, and preservation of  
10 fish, wildlife, and plant resources; monitoring, study, clean up,  
11 remediation, sampling, and analysis of pollution and other  
12 threats to the environment and ecosystem; research, study,  
13 training, planning, repair, maintenance, education, and public  
14 outreach relating to the environment and ecosystem; and  
15 enforcement of environmental, public safety, and wildlife  
16 protection laws. Accordingly, defendant agrees that on the date  
17 of sentencing, defendant shall pay a total of \$71,465.96 to the  
18 agencies listed below:

19           a. \$36,465.96 to the California Hazardous Materials  
20 Association to be used in designing and providing training to  
21 local, state, and federal environmental and public safety  
22 investigators and regulators on criminal and civil enforcement  
23 actions, including, but not limited to, investigating and  
24 prosecuting responses to hazardous waste, hazardous material, air  
25 pollution, water pollution, and work place safety violations.

26           b. \$35,000 to the Culver City Police Department to  
27 support commercial vehicle and hazardous materials enforcement  
28 efforts, including, but not limited to: the procurement of

1 equipment; enforcement personnel training; and funding of  
2 operational expenses.

3       17. Defendant agrees that because the payments to the  
4 foundation listed above are community service by an organization,  
5 defendant will not seek any reduction in its tax obligations as a  
6 result of such community service payment. Defendant further  
7 agrees that because these payments shall be made pursuant to this  
8 Agreement, defendant will not characterize, publicize, or refer  
9 to the payment as anything other than a community service  
10 payment.

11    DEFENDANT'S OBLIGATIONS

12       18. Defendant agrees:

13    a. To plead guilty as set forth in this Agreement.

14    b. To abide by all sentencing stipulations contained  
15 in this Agreement.

16    c. To appear as ordered for all court appearances and  
17 obey any other ongoing court order in this matter.

18    d. Not to commit any crime.

19    e. To be truthful at all times with Pretrial  
20 Services, the U.S. Probation Office, and the Court.

21    f. To pay the applicable special assessment at or  
22 before the time of sentencing.

23    THE USAO'S OBLIGATIONS

24       19. If defendant complies fully with all defendant's  
25 obligations under this Agreement, the USAO agrees to abide by all  
26 sentencing stipulations contained in this Agreement. In  
27 addition, in exchange for defendant's full compliance with its  
28 obligations under this Agreement, the USAO agrees not to

1 prosecute defendant for any additional offenses arising out of  
2 the traffic stop and investigation conducted by the Culver City  
3 Police Department and Fire Department, along with other local and  
4 federal agencies, on the date of June 20, 2006, giving rise to  
5 this investigation, except as reserved in paragraphs 20 and 21  
6 below.

## BREACH OF AGREEMENT

8       20. If defendant, at any time between the execution of this  
9 Agreement and defendant's sentencing knowingly violates or fails  
10 to perform any of defendant's obligations under this Agreement  
11 ("a breach"), the USAO may declare this Agreement breached. If  
12 the USAO declares this Agreement breached, and the Court finds  
13 such a breach to have occurred by a preponderance of the evidence  
14 as to which the USAO shall have both the burden of production and  
15 persuasion, defendant will not be able to withdraw defendant's  
16 guilty plea, and the USAO will be relieved of all of its  
17 obligations under this Agreement.

18        21. Following a knowing and willful breach of this  
19 Agreement by defendant, should the USAO elect to pursue any  
20 charge that was not filed as a result of this Agreement, then:

21               a. Defendant agrees that the applicable statute of  
22 limitations is tolled between the date of defendant's signing of  
23 this Agreement and the USAO's discovery of any knowing and  
24 willful breach by defendant.

25 b. Defendant gives up all defenses based on the  
26 statute of limitations during the tolling period as set forth in  
27 subparagraph (a), any claim of pre-indictment delay, or any  
28 speedy trial claim with respect to any such prosecution, except

1 to the extent that such defenses existed as of the date of  
2 defendant's signing of this Agreement.

### SCOPE OF AGREEMENT

4        22. This Agreement applies only to crimes committed by  
5 defendant, has no effect on any proceedings against defendant not  
6 expressly mentioned herein, and shall not preclude any past,  
7 present, or future forfeiture actions or other civil actions.

8        23. This Agreement does not prevent the USAO from  
9 prosecuting any individual or other organization for any offense,  
10 including the offenses charged in the Information.

COURT NOT A PARTY

12       24. The Court is not a party to this Agreement. The USAO  
13 and defendant understand and agree that: (a) if the Court accepts  
14 this Agreement, the parties are bound by the terms of the  
15 Agreement; and (b) if the Court does not accept this Agreement;  
16 any party may withdraw from the Agreement and defendant may  
17 withdraw its plea of guilty.

**NO ADDITIONAL AGREEMENTS**

19       25. Except as set forth herein, there are no promises,  
20 understandings or agreements between the USAO and defendant or  
21 defendant's counsel. Nor may any additional agreement,  
22 understanding or condition be entered into unless in a writing  
23 signed by all parties or on the record in court.

24 //

25 ✓

1                   PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

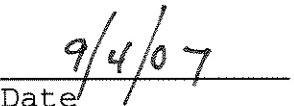
2       26. The parties agree and stipulate that this Agreement  
3 will be considered part of the record of defendant's guilty plea  
4 hearing as if as if the entire Agreement had been read into the  
5 record of the proceeding.

6                 This Agreement is effective upon signature by defendant and  
7 an Assistant United States Attorney.

8 AGREED AND ACCEPTED

9 UNITED STATES ATTORNEY'S OFFICE  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

10 GEOREGE S. CARDONA  
11 United States Attorney

12   
13   
14 JOSEPH O. JOHNS Date  
15 Assistant United States Attorney

Chief, Public Integrity and Environmental Crimes Section

16         As an authorized representative of defendant Pyrotek Special  
17 Effects, Inc. ("defendant"), I have read this Agreement and  
18 carefully discussed every part of it with defendant's attorney.  
19 I understand the terms of this Agreement, and I voluntarily agree  
20 to those terms. Defendant's attorney has advised me of  
21 defendant's rights, of possible defenses, of the Sentencing  
22 Guideline provisions, and of the consequences of entering into  
23 this Agreement. No promises or inducements have been made to me  
24 or defendant other than those contained in this Agreement. No

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26 //

27

28

1 one has threatened or forced me or defendant in any way to enter  
2 into this Agreement. Finally, I am satisfied with the  
3 representation provided by defendant's attorney in this matter.



4  
5 Jim Bell  
6 Authorized Representative  
7 of Pyrotek Special Effects, Inc.  
8 Defendant

Sept 4/07  
Date

9  
10 I am defendant's attorney. I have carefully discussed every  
11 part of this Agreement with the authorized representatives of  
12 defendant. Further, I have fully advised the authorized  
13 representative of defendant's rights, of possible defenses, of  
14 the Sentencing Guidelines' provisions, and of the consequences of  
15 entering into this Agreement. To my knowledge, the decision of  
16 defendant and its authorized representatives to enter into this  
17 Agreement is an informed and voluntary one.



18 DUANE R. LYONS  
19 Counsel for Defendant  
20 Pyrotek Special Effects, Inc.

21 9/4/07  
22 Date